

## Message Text

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11/64

ACTION EUR-25

INFO OCT-01 IO-14 ISO-00 AID-20 CEA-02 CIAE-00 COME-00

EB-11 FRB-02 INR-10 NSAE-00 RSC-01 CIEP-02 SPC-03

STR-08 TRSE-00 LAB-06 SIL-01 OMB-01 SS-20 NSC-10 L-03

H-03 PA-04 PRS-01 USIA-15 DRC-01 /164 W

----- 003442

R 301745Z NOV 73

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 6102

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

USMISSION GENEVA

USMISSION OECD PARIS

UNCLAS EC BRUSSELS 6953

C O R R E C T E D C O P Y (CORRECT MRN TO READ 6953 VICE 6053)

.O. 11652: N/A

TAGS: ETRD, EEC

SUBJECT: EC COMMISSION AUTHORITY FOR MTN

REF: STATE 223671

1. THE COMMISSION STAFF HAS FURNISHED THE FOLLOWING  
INFORMATION TO THE MISSION AFTER CONSULTATION WITH ITS  
LEGAL ADVISORS.

2. LEGAL POWER FOR THE COMMUNITIES TO OPEN AND CONDUCT  
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NEGOTIATIONS AND TO PUT INTO EFFECT AGREEMENTS IS

GOVERNED BY ARTICLES 113, 114 AND 228 OF THE TREATY  
OF ROME ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY (EEC).

3. ARTICLE 113 STATES THAT IN NEGOTIATIONS WITH THIRD COUNTRIES THE COMMISSION SHALL MAKE RECOMMENDATIONS TO THE COUNCIL WHICH WILL AUTHORIZE THE COMMISSION TO OPEN THE NEGOTIATIONS. IN THE PAST, HOWEVER, THE COMMISSION HAS SOMETIMES OPENED NEGOTIATIONS WITHOUT HAVING FIRST GOTTEN SPECIFIC AUTHORIZATION FROM THE COUNCIL, SINCE PRECEDENCE HAS PERMITTED A RATHER WIDE INTERPRETATION OF PARA 3 OF ARTICLE 113. WE UNDERSTAND THAT COUNCIL APPROVAL OF THE COMMUNITY'S TRADE OVERVIEW AND OF EC ADHERENCE TO THE TOKYO DECLARATION CONSTITUTE THE AUTHORIZATION FOR THE MULTILATERAL TRADE NEGOTIATIONS IN THE SENSE OF ARTICLE 113.

4. THE COMMISSION STRONGLY DISLIKES THE USE OF THE WORD "MANDATE" TO DESCRIBE THESE AUTHORIZATIONS. THE COMMISSION BELIEVES THAT THE WORD "MANDATE" IS AN ACTION WHEREBY A BODY HAVING AUTHORITY TO PERFORM A SPECIFIC TASK DELEGATES THAT AUTHORITY TO AN AGENT. THE COMMISSION BELIEVES THAT THE AUTHORITY TO MAKE RECOMMENDATIONS AND TO NEGOTIATE LIES IN THE COMMISSION AND NOT IN THE COUNCIL. CONSEQUENTLY THE COUNCIL CANNOT GIVE THE COMMISSION A "MANDATE" TO NEGOTIATE. THE COUNCIL CAN, HOWEVER, AUTHORIZE THE COMMISSION TO NEGOTIATE. THIS IS A CONSTITUTIONAL POINT OF NO GREAT MOMENT FOR THE REST OF THE WORLD, BUT THE COMMISSION, IN ITS SPARRING FOR POWER WITH THE COUNCIL, BELIEVES IT IMPORTANT.

5. ARTICLE 113 ALSO STATES THAT DURING THE NEGOTIATIONS THE COUNCIL MAY REPEAT MAY ISSUE DIRECTIVES FOR THE NEGOTIATIONS. THE TREATY DOES NOT REQUIRE THAT THE COUNCIL ISSUE SUCH DIRECTIVES. HOWEVER, BECAUSE OF THE IMPORTANCE OF THE MTN THE COMMISSION PLANS TO SEEK DIRECTIVES DURING THE COURSE OF NEGOTIATIONS, IN ORDER TO BE "CLOSE TO REALITIES" IN ITS POSITIONS. THE COMMISSION HAS IN FACT PREVIOUSLY TOLD US THAT IT WILL SEEK SUCH A DIRECTIVE BEFORE ENTERING THE SUBSTANTIVE PHASE OF THE NEGOTIATIONS.

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6. ARTICLE 114 STATES THAT AT THE END OF NEGOTIATIONS THE COUNCIL SHALL CONCLUDE AGREEMENTS ON BEHALF OF THE COMMUNITY BY MEANS OF A QUALIFIED MAJORITY VOTE. (FOR ALL PRACTICAL PURPOSES THE QUALIFIED MAJORITY VOTE MUST STILL BE UNANIMOUS AS A RESULT OF THE LUXEMBOURG COMPROMISE IF THE ISSUE IS IMPORTANT ENOUGH TO ONE OF THE MEMBER STATES. HOWEVER, THE LUXEMBOURG COMPROMISE

WAS AN AGREEMENT AMONG THE MEMBER STATES OUTSIDE THE FRAMEWORK OF THE COMMUNITY INSTITUTIONS AND NOT FORMALLY A PART OF THE COMMUNITY LEGAL INSTRUMENTS, I.E., THE SIX MEMBER STATES AGREED TO CONTINUE DEBATING EACH ISSUE IN ORDER TO ACHIEVE UNANIMITY RATHER THAN SUBMITTING MATTERS OF VITAL INTEREST TO A MEMBER STATE TO A FORMAL VOTE SUBJECT TO A QUALIFIED MAJORITY. THE COMMISSION DOES NOT FORMALLY RECOGNIZE THE LUXEMBOURG COMPROMISE.)

7. ARTICLE 228 MAKES BINDING ON MEMBER STATES AGREEMENTS WHICH HAVE BEEN CONCLUDED IN ACCORDANCE WITH THE EEC TREATY.

8. NOWHERE IN THIS PROCESS IS IT NECESSARY THAT THERE BE LEGISLATIVE AUTHORIZATION, RATIFICATION OR CONCURRENCE. (ONE EXCEPTION WOULD BE FOR AGREEMENTS ON NTB'S BEYOND THE COMPETENCE OF THE EUROPEAN COMMUNITY. SHOULD THE COMMUNITY CONCLUDE SUCH AGREEMENTS, THE SEPARATE MEMBER STATES WOULD HAVE TO RATIFY THESE AGREEMENTS.) ARTICLE 228 DOES REQUIRE THAT PRIOR TO CONCLUDING AGREEMENTS THE COUNCIL CONSULT THE EUROPEAN PARLIAMENT WHERE REQUIRED BY THE EEC TREATY, BUT THE COUNCIL NEED NOT HEED THE PARLIAMENT.

9. COMMENT. THE ABOVE IS A DESCRIPTION OF THE FORMAL CONSTITUTIONAL PROCEDURE FOR COMMUNITY NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS. HOWEVER, THE ACTUAL FACT IS THAT FOR THE MULTILATERAL TRADE NEGOTIATIONS, THE COMMISSION WILL NEGOTIATE UNDER VERY CAREFUL SUPERVISION OF THE MEMBER STATES. AT EACH STAGE THE COMMISSION WILL SEEK AN UNDERSTANDING FROM THE COUNCIL ON WHAT IT MAY DO. WHILE UNCLASSIFIED

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THE COMMISSION HAS SCOPE TO ENGAGE IN INFORMAL EXPLORATIONS WITH THIRD COUNTRIES, IT WILL ADOPT ONLY THOSE NEGOTIATING POSITIONS ON WHICH MEMBER STATE UNANIMITY IS POSSIBLE. GREENWALD

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NNN

## Message Attributes

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